

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Behavioral Health (“the Department”), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the “Fiscal Year 2014 Budget Support Act of 2013”, effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12472 (September 6, 2013)), hereby gives notice of the adoption, on an emergency basis, of a new Chapter 57 entitled “Mental Health Community Residence Facility Per Diem”, of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The Department of Behavioral Health licenses Mental Health Community Residence Facilities pursuant to Title 22-B DCMR Chapter 38. Mental Health Community Residence Facilities (MHCRFs) are defined as “publicly or privately owned community residence facility . . . that houses individuals eighteen (18) or older: (a) With a primary diagnosis of mental illness; and (b) who require twenty-four hour (24 hr.) on site supervision, personal assistance, lodging and meals.” Independent MHCRFs are those facilities that do not have a contract with the Department to provide heightened levels of care. Currently, over 440 individuals with serious mental illness reside in 67 independent MHCRFs licensed by the Department. As part of their licensing requirements, independent MHCRFs play a critical role in caring for its residents and helping them live in the least restrictive community environment. The availability of this resource is also important in providing community living arrangements for those individuals leaving nursing homes and psychiatric hospitalizations.

Independent MHCRFs have broad responsibilities the Chapter 38 licensing rules, including: providing supervised care by qualified staff whenever residents are present in the facility; providing three nutritious meals a day; safely maintaining currently prescribed resident medications and supervising residents in taking medications; meeting special dietary needs; assisting residents with Activities of Daily Living such as helping a resident get dressed, go up and down stairs, and wash clothing; and coordinating care with the resident’s Core Services Agency and other healthcare providers. In addition, independent MHCRFs must meet housing and fire code requirements and maintain insurance coverage.

With the rise in personnel, housing and other costs in the District of Columbia, many MHCRF operators are experiencing financial hardship in continuing to serve this needy population. Presently, the independent MHCRF operators’ sole source of income is the rent money received from the residents themselves, an amount that is capped under the law. The rental amount that a resident pays to the MHCRF, which derives from the resident’s Social Security Insurance (SSI) and Optional State Supplement (OSP), is currently \$1,206.00 per month per resident. This amount is not sufficient to fully support this network that is subject to robust licensing and regulatory requirements. As a result, the Department has determined that emergency rulemaking is necessary to provide immediate financial support to its independent MHCRF network to preserve the health, welfare, and safety of those residents with serious mental illness.

The emergency rule establishes a locally-funded per diem to be paid to all independent MHCRFs licensed by the Department. To be eligible for the per diem, an MHCRF shall be required to enter into a contract with the Department. The per diem will be paid per resident and invoiced to the Department every 30 days by the MHCRF operators. The per diem is subject to availability of funds.

The emergency rulemaking was adopted on April 7, 2014, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days, expiring August 5, 2014, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Title 22-A (Mental Health) of the District of Columbia Municipal Regulations is amended by adding a new Chapter 57 to read as follows:

CHAPTER 57 INDEPENDENT MENTAL HEALTH COMMUNITY RESIDENCE FACILITY PER DIEM

5700 PURPOSE

5700.1 This chapter establishes the reimbursement rate for the Independent Mental Health Community Residence Facility (MHCRF) Per Diem for the care and support of individuals with serious mental illness residing in these facilities. Establishment of this locally-funded per diem will allow the Department of Behavioral Health (the Department) to support the MHCRF network and ensure the continued availability of this critical housing resource.

5700.2 Nothing in this chapter grants to an independent MHCRF operator the right to reimbursement for costs of MHCRF services. Eligibility for reimbursement for supportive services is determined solely by the contract between the Department and the independent MHCRF operator and is subject to the availability of appropriated funds.

5701 REIMBURSEMENT RATE

5701.1 The Independent MHCRF Per Diem rate is as set forth below:

SERVICE	RATE	UNIT
Independent MHCRF Per Diem	\$ 23.00	Daily

5702 ELIGIBILITY

Only a licensed independent MHCRF operator who has entered into a contract with the Department will be eligible for reimbursement under this chapter. An MHCRF shall not be eligible to receive a per diem under this chapter if the

MHCRF is receiving District of Columbia contract or grant funds under a separate program.

5703 SUBMISSION OF CLAIM; PAYMENT OF INVOICE

5703.1 The licensed independent MHCRF operator shall submit all per diem claims under the contract by invoice, pursuant to this chapter and the terms of the contract.

5703.2 The licensed independent MHCRF operator shall submit appropriate documentation to support all claims under its contract with the Department.

5703.3 The Department will reimburse a licensed independent MHCRF operator for a claim that is determined by the Department to be eligible for reimbursement pursuant to the terms of the contract between the Department and the licensed independent MHCRF operator, subject to the availability of appropriated funds.

5703.4 No independent MHCRF operator shall submit claims in excess of its contract with the Department.

5704 AUDITS

5704.1 A licensed independent MHCRF operator shall, upon the request of the Department, cooperate in any audit or investigation concerning the Independent MHCRF Per Diem program.

5799 DEFINITIONS

5799.1 When used in this chapter, the following terms shall have the meaning ascribed:

Mental Health Community Residence Facility (MHCRF) - a publicly or privately owned residence licensed in accordance with 22-B DCMR Chapter 38, that houses individuals, eighteen (18) or older, with a principal diagnosis of mental illness and who require twenty-four hour (24 hr.) on-site supervision, personal assistance, lodging, and meals and who are not in the custody of the District of Columbia Department of Corrections.

Independent Mental Health Community Residence Facility (MHCRF) Operator - an individual or entity that is licensed to operate an MHCRF and who has contracted with the Department for a per diem pursuant to this chapter.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Suzanne Fenzel, Deputy Director, Office of Strategic Planning, Policy and Evaluation, Department of Behavioral Health, at 64 New York

Ave., NE, 3rd Floor, Washington, D.C. 20002, or e-mailed to Suzanne.Fenzel@dc.gov. Copies of the proposed rules may be obtained from dmh.dc.gov or from the Department of Behavioral Health at the address above.